

Office of Information Practices

State of Hawaii

Annual Report 2002



This report to the Governor and the Legislature describes the work of the Office of Information Practices in implementing the State of Hawaii's public records law, known as the Uniform Information Practices Act (Modified), and the open meetings law, Part I of chapter 92, Hawaii Revised Statutes, from July 1, 2001, to June 30, 2002.

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Director's Message

Enforcing Open Government

In the past, Hawaii's people faced many difficulties and challenges in ensuring an open government. When the OIP was first established, the Legislature intended that the OIP be the agency to implement statewide, uniform policies with regard to information held by the government. Government agencies had certain responsibilities to the public to answer requests for records. Unfortunately, government agencies simply shifted their accountability for these requests to the OIP, causing a bottleneck and overwhelming the allotted resources.

To alleviate the "bottleneck" effect, the OIP adopted rules that would "require government agencies to respond to people and are intended to foster the attitude that government employees are *trustees* – not the owners – of government information."

In 2000, a review of the OIP's work indicated that plans to improve an open government and its services were bearing fruit: adoption of rules with model forms, and education of government employees through classroom and website training methods provided certainty and clarity. Government employees were more able to respond to a request for information in a timely manner. And, in fact, the Director's Message that year said that

"[the] year's data shows that this long-term plan has begun to have an effect. . . . The OIP web site has proven to be effective and widely used by our community. . . . Requests to the OIP for assistance from government agencies have fallen."

"These changes indicate that the rules adopted by the OIP have had the impact of forcing agencies to answer requests for government records, thus opening up the bottleneck. Now agencies are actually deciding for themselves whether to disclose records, without first relying upon calls to the OIP for guidance."



A more significant difficulty is the serious decline in government revenues and the impact of budget reductions on the ability of government agencies to respond to requests for government information. The Legislature has already established a comprehensive open government policy. And the OIP is the institutionalized voice of integrity and fairness in support of these policies.

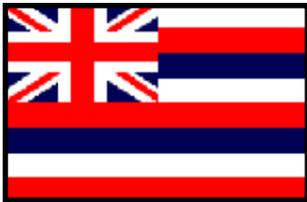
But, as Hawaii faces its worst-ever fiscal crisis and as government downsizes, our policy-makers will be forced to reevaluate Hawaii's commitment to these open government policies as they reallocate dwindling resources. If the Legislature set open government policies, it must support government's ability to be an open government by adequately funding and providing consistent support for those policies.



Government cannot ask the private sector to follow laws set by the Legislature unless the government itself is willing to follow open government laws. In looking to the future,

it is important that the goals of an open government be supported by the leaders of our government through the adoption of structural changes. Therefore, I strongly recommend the following:

- That all “good government” agencies be provided with a dedicated source of adequate funding;
- That all government agency employees be trained in the open records and open meetings laws;
- That all government agencies establish that certain positions be held accountable for the department’s compliance with the law.



The OIP stands ready to do its part in furthering good government in Hawaii, “ensuring open government while protecting your privacy.”

Highlights of the past year, and an overview of this report, appear in the Executive Summary, beginning on page 9. For a quick look at the OIP’s work, see the charts and tables on pages 21-30, and **Chart 2** on page 9, which tracks new cases opened in the past five years. For a historical perspective on the OIP’s budget through the years, see **Chart 1** and **Table 1** on pages 7-8.

Moya T. Davenport Gray
Director



Budget

The OIP's annual budget has stabilized at a bare bones level of about \$350,000 per year since Fiscal Year 1999, as reflected in **Chart 1** below and **Table 1** on the next page.

During Fiscal Year 2002, the OIP operated with personnel costs of \$320,278 and operational costs of \$38,179.

The OIP's largest budget year was Fiscal Year 1994, when the annual budget was \$827,537, with a staff of 15 positions (10 permanent and five temporary). The OIP's budget was most deeply affected in 1998, when the Legislature decreased the agency's overall budget by \$216,766 and eliminated three of eight permanent positions.

Today, although the OIP has 8 positions, it is functioning with only 6.5 positions (5 permanent and 1.5 temporary).

The OIP's current staffing is a director, three staff attorneys, and three other staff members. Although there is an additional staff attorney position, the OIP does not have the funds to fill this position. The OIP continues to look for ways to cut its operational costs while increasing the productivity of its employees.

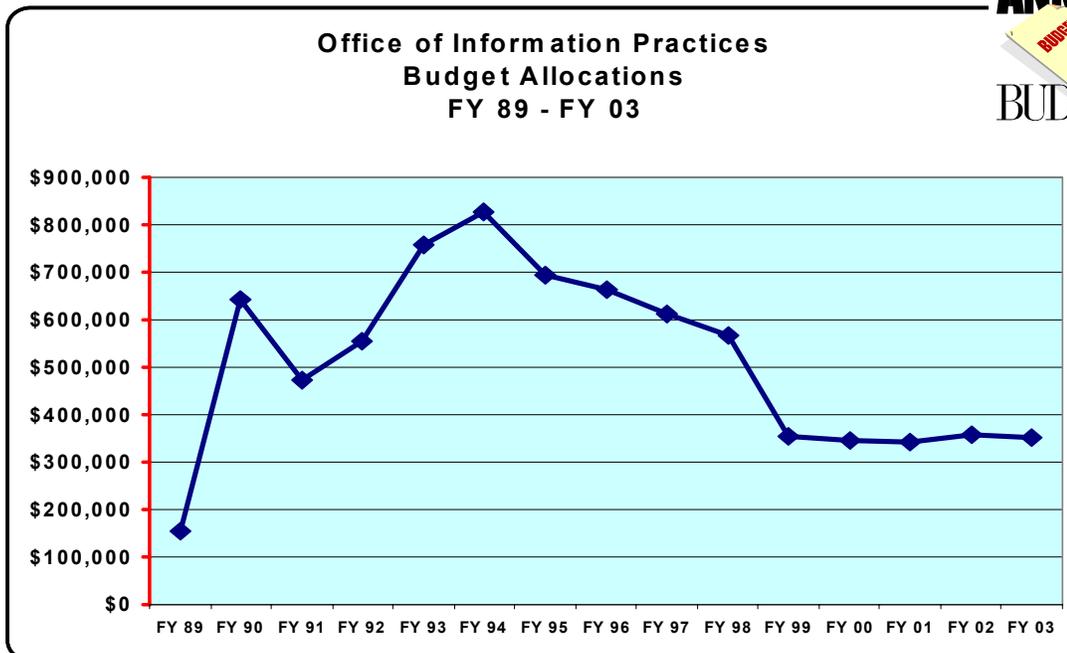


Chart 1



Office of Information Practices
Budget FY 1989 to 2003

Fiscal Year	Operational Costs	Personnel Costs	Allocations	Permanent Positions	Temporary Positions
FY 03	38,179	312,483	350,662	5	3
FY 02	38,179	320,278	358,457	5	3
FY 01	38,179	302,735	340,914	5	3
FY 00	37,991	308,736	346,727	5	3
FY 99	45,768	308,736	354,504	5	3
FY 98	119,214	446,856	566,070	5	3
FY 97	154,424	458,882	613,306	8	3
FY 96	171,524	492,882	664,406	8	4
FY 95	171,524	520,020	692,544	10	5
FY 94	249,024	578,513	827,537	10	5
FY 93	248,934	510,060	758,994	10	5
FY 92	167,964	385,338	553,302	6	4
FY 91	169,685	302,080	471,765	6	4
FY 90	417,057	226,575	643,632	6	4
FY 89	70,000	86,000	156,000	4	0

Table 1

Executive Summary



The Office of Information Practices (“OIP”) was created by the Legislature in 1988 to administer Hawaii’s new public records law, the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (“UIPA”).

In 1998 the Legislature gave the OIP the additional responsibility of administering the open meetings law, Part I of chapter 92, Hawaii Revised Statutes (“Sunshine Law”).

Information about the funding of OIP over the years is discussed and charted on pages 7-8.

Recommendations

The OIP continues to promote open government for the State of Hawaii and for the counties. To aid in this effort, the Director’s message (pages 5-6) makes the following recommendations:

- That all “good government” agencies be provided with a dedicated source of adequate funding;
- That all government agency employees be trained in the open records and open meetings laws;
- That all government agencies establish that certain positions be held accountable for the department’s compliance with the law.

The OIP stands ready to do its part in furthering good government in Hawaii, “ensuring open government while protecting your privacy.”

This annual report for Fiscal Year 2002 covers the OIP’s work in three areas: enforcement, implementation, and informing the community.

Enforcement

The OIP opened 12 new investigations into the actions of government agencies in FY 2002 (see pages 12-13). Some of these were opened following complaints made by members of the public. Upon completion of an investigation, should the OIP find there was a violation, the OIP will recommend either training or discipline of the employees involved.

The OIP tracked three new cases in the courts, five continuing cases, and two cases related to the Sunshine Law (see pages 15-19). Any person who requests a government record and is denied access has two courses of action, as stated in chapter 92F-15, Hawaii Revised Statutes. The person may appeal to the OIP for assistance, or bring suit in the circuit courts to compel disclosure of the record. The OIP has standing to appear in any action in which the provisions of the UIPA have been called into question.

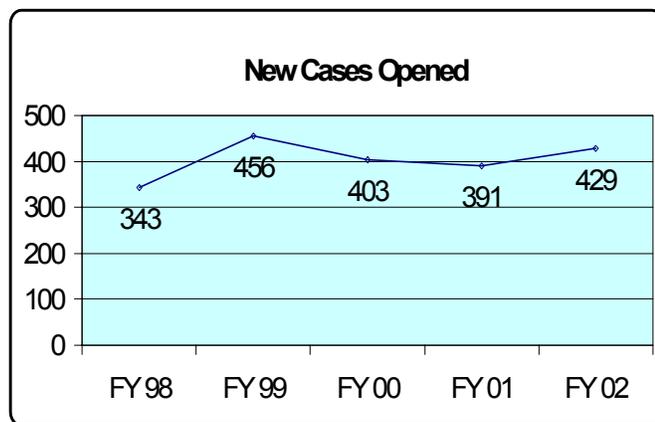
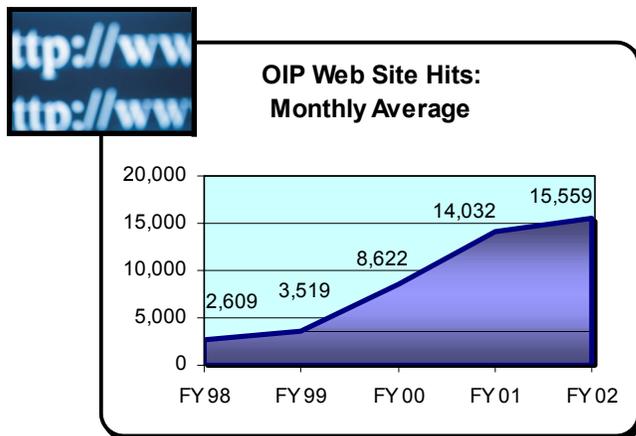


Chart 2

During the past five years, the OIP received a large number of requests for assistance and opened an average of 404 new cases per year, or 161.6 cases per staff attorney. In FY 2002, the OIP staff reviewed and closed 412 pending assignments.



The OIP tracks litigation to monitor the issues and concerns under the UIPA that are not resolved through the OIP. The OIP reviews and assesses each case to determine whether the provisions of the UIPA are called into question and whether to intervene actively or simply monitor the litigation’s progress.

Implementation

The OIP gives legal assistance to members of the public and to government agencies regarding the UIPA and the Sunshine Law. A majority of the requests for assistance come through the “Attorney of the Day” service, where the OIP staff attorneys provide the caller with definitive legal advice within one or two days.

In FY 2002, the OIP received 696 telephone requests. Information about these requests – who’s calling and which government agencies are involved – appears on pages 20-29.

Summaries of 16 of these cases, beginning on page 31, give a good idea of how the OIP provides legal assistance. Summaries of the OIP’s formal opinion letters for FY 2002 begin on page 36.

In the 2002 Session of the Legislature, the OIP reviewed and monitored 194 legislative initiatives affecting government’s information practices, public access to government records and meetings, and the privacy rights of

individuals. The OIP staff attorneys and Director appeared frequently at the Legislature to testify about bills insofar as they related to these subjects (see pages 42-44).

The OIP also is tasked by statute to adopt several sets of administrative rules. See page 45 for the OIP’s current work in this area.

Another part of the UIPA, section 92F-18(b), Hawaii Revised Statutes, mandates a public records report. State and county agencies have reported 33,649 sets of records on the Records Report System (see pages 46-47).

Informing the Community

The OIP’s publications play a vital role in the agency’s ongoing efforts to inform the public and government agencies about the UIPA, the open meetings law, and the work of the OIP (see pages 48-51).

In FY 2002, the OIP continued its traditional print publications, including the monthly *Openline* newsletter and the *Office of Information Practices Annual Report 2001*. In addition, the OIP continued to expand and improve the web site that it launched on the Internet in April 1998. Visitors to the site have increased greatly each year.

The OIP has also prepared, and makes available, model forms that agencies and members of the public may use to follow the procedures set forth in the OIP’s rules for making, and responding to, record requests (see page 51).

Each year, the OIP makes presentations and provides training in information practices and the Sunshine Law. The OIP conducts this outreach effort as part of its mission to inform the public of its rights and assist government agencies in complying with the law. For details of the OIP’s work in this area, see pages 52-53.



Highlights of the OIP's Work in Fiscal Year 2002



Enforcement

Investigations of Government Agencies

The OIP opened 12 new investigations into the actions of government agencies in FY 2002. Some of these were opened following complaints made by members of the public.



Some of the requests for investigations were subsequently withdrawn by the requester. But where the OIP determined that there appeared to be merit to the allegations, the OIP continued the investigation. Upon completion of the investigation, should the OIP find there was a violation, the OIP will recommend either training or discipline of the employees involved.

Here are summaries of a few of the complaints received.

City and County of Honolulu

Two City and County of Honolulu civil service employees complained that a department employee disclosed their exact salaries publicly, and that this was an invasion of their privacy.

Section 92F-12(a)(14), Hawaii Revised Statutes, requires that “compensation (but only the salary range for employees covered by or included in chapters 76 and 77, and sections

302A-602 to 302A-640, and 302A-701, or bargaining unit (8))” is public information.

As a supervisor, the accused employee was entitled to access the complainants’ exact salary information in order to help prepare the department’s budget. He did acknowledge that public disclosure may have been inappropriate, and was counseled on this by his supervisor.

The OIP noted that since the occurrence of the incidents complained about, the City has gone through a department reorganization. Some of the individuals involved are no longer employed by the City, and the department no longer exists, as it was merged into a new one. The OIP therefore recommended training to the individuals involved who are still employed by the City.

The OIP also reminded the new department that the UIPA requires agencies to issue instructions and guidelines to effectuate the UIPA, and to take steps to assure that all employees and officers responsible for the collection, maintenance, use, and dissemination of records are informed of the UIPA’s requirements.

State Senator

Two members of the public complained that a State Senator was in violation of the UIPA and the OIP's administrative rules when the Senator's staff processed their record requests. The OIP determined that one of the complainants' "requests" was not actually a record request, but rather, a request that the Senator answer questions they had posed.

The OIP concluded that the other request was indeed a request for records, and that the time limits for response set forth in the OIP's administrative rules were not complied with. However, the fact that the Senator responded in writing to the OIP, rather than directly to the requesters, did not violate the UIPA or the OIP's administrative rules.

The Senator sent a copy of her correspondence to the OIP to the complainants, and therefore, they were on notice of the Senator's response. The OIP recommended training on the UIPA and the OIP's administrative rules.

Department of Accounting and General Services

Two members of the public asked the OIP to investigate allegations that the Department of Accounting and General Services ("DAGS") did not comply with the UIPA and the OIP's administrative rules in processing their record requests, and also made allegations of harassment.

The OIP's initial review of the facts indicated there might, in fact, have been some law violations. Therefore, although the complainants withdrew their complaint, the OIP recommended training to DAGS. Two UIPA training sessions were conducted with DAGS employees in July 2002.

Honolulu City Council

A newspaper reporter alleged that the Honolulu City Council violated the Sunshine Law by assembling during a recess of a meeting and discussing Council issues.

During a recess of the Council, two members met to discuss Council business outside of the public's hearing but within public view. Other members of the Council were seen to have joined the conversation.

The OIP concluded that while section 92-2.5, Hawaii Revised Statutes, allows two members of a board to meet without regard to the Sunshine Law, so long as no commitment to vote is made or sought, three or more members of a board should not meet outside of a public meeting to discuss board business except as is allowed by section 92-2.5, Hawaii Revised Statutes. This includes discussions during recesses of public meetings, even when in full view of the public.

The OIP found that the violation was not intentional. We recommended that members of the City Council carefully follow the requirements of section 92-2.5, Hawaii Revised Statutes, so that they do not inadvertently violate the law.

In this section:

*City and County of Honolulu
State Senator*

*Department of Accounting
and General Services*

Honolulu City Council

Office of Hawaiian Affairs

Vision Teams

Office of Hawaiian Affairs

The issue of whether the Office of Hawaiian Affairs' ("OHA") has guidelines in place to effectuate compliance with the UIPA, and the adequacy of such compliance, was presented to the OIP by another matter before the OIP.

In a separate case, OHA failed to provide access to records within the time limits contained in the OIP's administrative rules. Due to this UIPA violation, the OIP opened an investigation into the OHA's information practices. OHA responded to the investigation with a chronology of requests and actions taken.

Under section 92F-18(a)(1), Hawaii Revised Statutes, each agency is required to issue instructions and guidelines necessary to effectuate the UIPA. To ensure improved compliance with the OIP's rules, the OIP asked to review OHA's instructions and guidelines in place to effectuate compliance with the UIPA, which was provided to the OIP.

OHA also developed a more comprehensive information practices guide and appointed trained staff personnel to oversee its information practices. The guide is presently being reviewed by the OIP.

Vision Teams

The OIP received a request for an investigation of the Vision Teams' compliance with the Sunshine Law from a news media representative.

The representative had made a record request for (1) notices and agendas of meetings of all 19 of the City's Vision Teams from May 3, 2001, through March 27, 2002, and (2) minutes of meetings of all 19 of the City and County of Honolulu's ("City") Vision Teams from May 3, 2001, through March 27, 2002.

The news media representative provided the OIP with a copy of the documents responsive to his record request. The OIP is reviewing the notices, agendas, and minutes of meetings to determine whether the Vision teams are complying with the Sunshine Law.



Litigation Report

Any person who requests a government record and is denied access has two courses of action, as stated in chapter 92F-15, Hawaii Revised Statutes. The person may appeal to the OIP for assistance, or bring suit in the circuit courts to compel disclosure of the record. The OIP has standing to appear in any action in which the provisions of the UIPA have been called into question.

The OIP tracks litigation to monitor the issues and concerns under the UIPA that are not resolved through the OIP. The OIP reviews and assesses each case to determine whether the provisions of the UIPA are called into question and whether to intervene actively or simply monitor the litigation's progress. Cases monitored in FY 2002 follow.

► New Cases:

Access to Presentence Reports

In **Kong v. Department of Public Safety**, Civ. No. 02-01-1271-05 (1st Cir. Haw., filed May 24, 2002), an inmate alleged that certain documents dating from 1988, 1993, and 1994 were missing from his Department of Public Safety ("PSD") file, that he made a request for documents to which he did not receive a response, and that he was denied access to presentence reports.

The suit seeks, *inter alia*, a declaratory judgment that the alleged denial of access, failure to replace and/or inquire into missing documents, and denial of correction rights violates the policies and procedures of the

PSD, the UIPA, and the Plaintiff's constitutional rights under the Hawaii State Constitution. The suit also seeks an order requiring disclosure and reimbursement of Plaintiff's costs.

Certain of the records sought are records under the jurisdiction of the Judiciary; UIPA access to the Judiciary's records is limited to administrative records. Haw. Rev. Stat. § 92F-3 (1993). Presentence reports are confidential by statute, and may be disclosed only as permitted under section 806-73, Hawaii Revised Statutes.



Hawaii Civil Rights Commission Records

In **Brown v. Hawaii Civil Rights Commission**, Civ. No. 02-1-0034 (2nd Cir. Haw., filed January 24, 2002), a plaintiff-employer filed a UIPA lawsuit, seeking access to an investigative file of the Hawaii Civil Rights Commission ("HCRC").

Under section 368-4(a), Hawaii Revised Statutes, all investigation records filed with the HCRC are to be kept confidential, unless a

In this section:

Access to Presentence Reports
Hawaii Civil Rights Commission Records
Real Property Tax Information
DHS Fair Hearing Decisions
Access to Employee Information
Right to Privacy
Access to Personal Records
Fiscal and Audit Reports Submitted by a Non-Profit Corporation to a State Agency
Sunshine Law Consent Decree
Sunshine Law and UH President's Salary

lawsuit based on the complaint is filed or the HCRC has issued a letter authorizing the complainant to file suit. Then, factual matters provided to the HCRC are to be made available to the parties to help them prosecute or defend the lawsuit based upon the complaint of discrimination.

In this case, although a lawsuit had been filed against the employer, the lawsuit had been settled (without the employer obtaining the investigative file.) A court is authorized to order release of investigative records only if it has “jurisdiction in a case arising from a complaint filed with the commission.” Haw. Rev. Stat. § 368-4(a)(1) (Supp. 2001).

As the lawsuit seeking the investigative file was brought under the UIPA, and not in a case arising from the HCRC complaint, the Court granted the HCRC’s motion to dismiss.

Real Property Tax Information

In **West Hawaii Today v. Finance Department of the County of Hawaii**, 01-1-0116 (3rd Cir. Haw., filed July 11, 2001), a newspaper filed a lawsuit seeking a copy of a letter from a mortgage company to the County of Hawaii concerning a real property tax debt owed to the County of Hawaii. Two days after access to the letter was denied by the County of Hawaii, Finance Department, the newspaper filed a lawsuit to obtain access. The OIP was informed by the parties that the lawsuit was subsequently settled, and that each party paid its own attorney fees and costs.

► Continuing Cases:

DHS Fair Hearing Decisions

In **Foytik v. State of Hawaii Department of Human Services**, Civ. No. 00-1-2059 (1st Cir. Haw., filed June 30, 2000), S.C. No. 24052, the Plaintiff challenged the redaction by the Department of Human Services (“DHS”) of some information from its fair hearing decisions.

The Plaintiff’s case was dismissed, apparently based on the fact that the Plaintiff had obtained redacted versions of the decisions. The circuit court, however, failed to decide the Plaintiff’s claim that the redaction was improper.

The Plaintiff appealed the circuit court decision. The OIP filed an *amicus curiae* brief in the appeal, to protect a requester’s ability to challenge the redaction of information from a record as a denial of access to part of the record.

Throughout FY 2002, the appeal has been awaiting decision before the Supreme Court. The OIP continues to monitor this appeal.

Access to Employee Information

In **Monte M. Boyd v. State of Hawaii Department of Public Safety**, Civ. No. 01-1-00525 (1st Cir. Haw., filed February 16, 2001), the Plaintiff alleged that the Department of Public Safety (“PSD”) denied his request for records asking for the name of each officer assigned to a particular correctional facility unit.

Under the UIPA, the “name . . . job title, business address . . . employing agency name and code, department, division, branch, office, section, unit, and island of employment, of present or former officers or employees of the agency” must be disclosed, “[a]ny other law to the contrary notwithstanding.” Haw. Rev. Stat. § 92F-12(a)(14) (Supp. 2001). However, agencies are not required to create “a roster of employees.” *Id.* Nor are agencies required to disclose information concerning employees working in an undercover capacity in a law enforcement agency. *Id.*

The PSD’s answer to the Plaintiff’s complaint stated that the agency may have the information the Plaintiff is seeking, but it may not be readily retrievable in the form in which it was requested. The PSD also cited sections 92F-13 and 92F-22 as authority for the withholding of the records requested by the plaintiff.

The Plaintiff requested, but did not receive, a waiver of fees or leave to proceed *in forma pauperis*. The court notified the Plaintiff that failure to pay costs of filing fees could result in the case being dismissed. The Plaintiff did not take action and the complaint was dismissed without prejudice on July 19, 2001.

Right to Privacy

In **State of Hawaii v. Eto Bani**, 97 Haw. 285, 36 P.2d 1255 (2001), the defendant challenged the constitutionality of Hawaii’s sex offender registration and notification statute, chapter 846E, Hawaii Revised Statutes, on the basis of the constitutional rights to procedural due process, privacy, prohibition against cruel and unusual punishment, and the right to equal protection of the law.

In a November 21, 2001, decision, the Supreme Court found the public notification portion of the statute to be a deprivation of a protected liberty interest without due process

of law and thus unconstitutional based upon article 1, section 5 of the Hawaii Constitution.

The public notification portion of the statute authorized the attorney general and county police departments to allow any member of the public to access information such as the street name and zip code of a convicted sex offender’s home and work places, and permitted release of the information via the Internet.

The court found that the statute’s public notification portion concerned liberty interests such as employability and choice of housing, and could expose the offender to possible physical violence. The offender must be allowed a meaningful opportunity to argue that he or she does not represent a threat to the community and that notification to the public via the sex offender database is not necessary.

The court determined that the State must allow notice and an opportunity to be heard prior to public notification.

The court noted that the State also has an interest in assuring that the information disclosed to the public, which carries a label that a person is a danger to the community, is accurate.

The court did not consider the argument that chapter 846E, Hawaii Revised Statutes, violated the right to privacy, as it concluded that the due process clause of the Hawaii constitution bars application of the public notification provisions.

The OIP continues to monitor two other cases implicating privacy and chapter 846 E, Hawaii Revised Statutes, both of which are awaiting decision before the Supreme Court: **State of Hawaii v. Richard Epps**, Crim. No. 96-1141 (appeal filed April 22, 1999); and **State of Hawaii v. John R. Guidry**, Crim. No. 99-0573 (appeal filed August 5, 1999).

Although the issues in these appeals do not squarely implicate the UIPA, the OIP is monitoring these appeals because of the UIPA provision that authorizes agencies to withhold disclosure of “government records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy. Haw. Rev. Stat. § 92F-13(1) (1993).

Access to Personal Records

Section 92F-27, Hawaii Revised Statutes, entitles an individual to bring a civil action against an agency for failure to comply with the UIPA’s provisions concerning disclosure of personal records. Haw. Rev. Stat. § 92F-27 (1993). Should a court determine that there was a knowing or intentional violation of the UIPA’s provision as to disclosure of personal records, that section provides for recovery of no less than the sum of \$1000, plus costs and reasonable attorneys fees. *Id.*

In its Annual Report for fiscal years 2000 and 2001, the OIP reported that a single plaintiff, claiming that various agencies had violated part III of the UIPA, Disclosure of Personal Records, filed eleven different civil suits in the Third Circuit Court, entitled **Daniel A. Johnson v. State of Hawaii**, Civ. Nos. 99-154, 99-155, 99-173, 99-174, 99-231, 99-246, 99-297, 99-367, 99-412, 00-1-0010, and 00-1-000035 (3rd Cir, Haw).

By fiscal year 2002, only two of the eleven lawsuits remained unresolved. In Civil Number 99-231, the plaintiff claimed that the Department of Human Services failed to process a personal record request within ten working days. That case was dismissed because the plaintiff failed to file a pretrial statement, as required by court rules.

Thus, only one case remains open, Civil No. 99-297, a claim that the Hawaii Police Department failed to process a personal record request within ten working days. No documents were filed in that case during FY 2002.

Fiscal and Audit Reports Submitted by a Non-Profit Corporation to a State Agency

In **Yuen v. State of Hawaii**, S.P. 00-1-0004 (1st Cir. Haw, filed Jan. 3, 2000), a plaintiff filed a lawsuit seeking an order under the UIPA to allow inspection of fiscal reports and annual reports submitted by AlohaCare, Inc., to the State of Hawaii, Department of Human Services, Med-Quest Division.

The motion was granted, and remains in effect. Thereafter, AlohaCare intervened in the lawsuit, and filed a motion seeking an order denying the Plaintiff access to the documents from the State. That motion was denied. Thereafter, the State settled the lawsuit with the Plaintiff. Recently, the parties reported to the OIP that they have agreed to dismiss the lawsuit, as AlohaCare has made certain of the requested records available to Plaintiff.

► *Sunshine Litigation Report:*

Sunshine Law Consent Decree

In **Smith v. Apana**, 97-0536 (2nd Cir. Haw., filed July 7, 1997), the Plaintiff filed a complaint alleging violations of the Sunshine Law by the Maui County Planning Commission and the Land Use Committee of the Maui County Council.

In November 1999, the parties entered into a consent decree, the Defendants conceding that certain violations of the Sunshine Law did occur, through oversight, negligence, and reckless disregard of the Sunshine Law's requirements, and setting forth remedial action to remedy past Sunshine Law violations.

even if that were the case, the potential violation did not support the requested injunctive relief. The case was dismissed on November 8, 2002.



In December 2000, the parties agreed that the Corporation Counsel would develop standard compliance criteria to advise all board and commission members and support staff of the Maui boards of the requirements of the Sunshine Law. In March 2002, the Court ordered that Professor Jon M. Van Dyke be retained by the Maui County to prepare compliance criteria.

Sunshine Law and UH President's Salary

A lawsuit was filed by the Hawaii Society of Professional Journalists, Common Cause Hawaii, and a University of Hawaii student concerning alleged violations of the Sunshine Law, **Hawaii Society of Professional Journalists v. University of Hawaii**, Civ. No. 01-1-1262(04) (1st Cir. Haw., filed April 20, 2001).

On June 8, 2001, the Circuit Court denied the Plaintiff's Motion for Temporary Restraining Order, stating that it is permissible to convene in executive session to discuss the terms and conditions of an individual's employment.

The court also found that there is a question of fact as to whether the Board of Regents recessed and reconvened or went into executive session without an adequate vote; and that

Implementation

Legal Assistance



Each year, the OIP receives numerous requests for legal assistance from members of the public or employees of government agencies. A majority of the requests come through our “Attorney of the Day” service, where our OIP staff attorneys provide the caller with definitive legal advice within one or two days.

About one third of the requests for legal assistance require the OIP staff attorneys to provide clarification, mediation, or other legal assistance. In these instances, the staff attorneys conclude their assistance within three to four months.

A very small, but growing, percentage of the requests for assistance ask for formal legal opinions. For these requests, the OIP will handle them on a first-come, first served basis, unless the case falls within a priority category. When the case falls within a priority category, the staff attorney will attempt to resolve the issues as rapidly as possible, given the attorney’s workload. In all other cases, the staff attorney will work on the case in the order it is received.

Because of the massive budget cuts that the OIP has suffered in recent years, it can take years to resolve some of these issues and these cases represent the backlog of issues that the OIP must deal with.

Attorney of the Day – Rapid Legal Advice

The OIP’s Attorney of the Day service is a valuable resource for our community. The Attorney of the Day service is the fundamental resource used by government agencies and the public. Rather than struggle with uncertainty regarding a record request, the agencies phone the OIP early in the process to ask for guidance and assistance in responding to the request. Members of the public call the AOD to determine whether agencies are responding properly.

All of the legal questions are answered within one to two days, saving everyone time and ensuring a timely response to requests. Often the OIP works with both the requester and the agency to resolve issues inherent in the request.

Over the past five years, the OIP has received a total of 4,005 requests for Attorney of the Day (“AOD”) services. See **Table 3** on page 21. The yearly average of AOD requests over that period is 801 requests.

As can be seen from **Chart 3** and **Table 3** on this page, the number of requests to the Attorney of the Day vary every year. This fiscal year, the OIP experienced a 16% drop in requests to the Attorney of the Day service, for a total of 696 requests.

For numerical summaries of the telephone calls received by the OIP staff attorneys, please see pages 21-24. Case summaries of some of these calls begin on page 31.

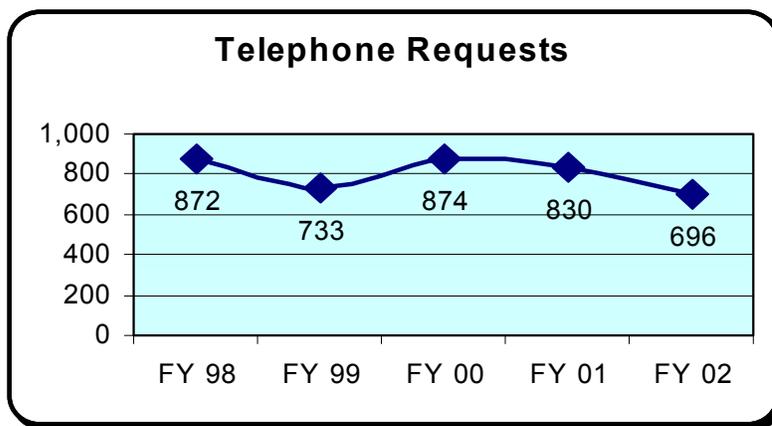


Chart 3

Fiscal Year	Total	Public	Government Agencies	Government Attorneys
FY 02	696	306	304	86
FY 01	830	469	214	147
FY 00	874	424	232	218
FY 99	733	336	314	83
FY 98	872	301	436	135

Table 3

Who Is Seeking Legal Assistance – The Requesters

The Public Caller — When a member of the public phones the OIP’s Attorney of the Day, the caller is usually seeking assistance because that person believes a government agency is improperly withholding access to a public record and wants to know what his or her rights are.

Of the 696 requests for Attorney of the Day assistance, 44% of the requests came from the public; this is a change from FY 2001, when 57% of the requests for Attorney of the Day service were from the public. See **Charts 4 and 5** on this page.

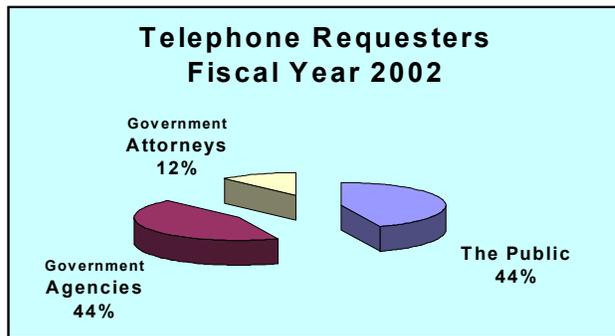


Chart 4

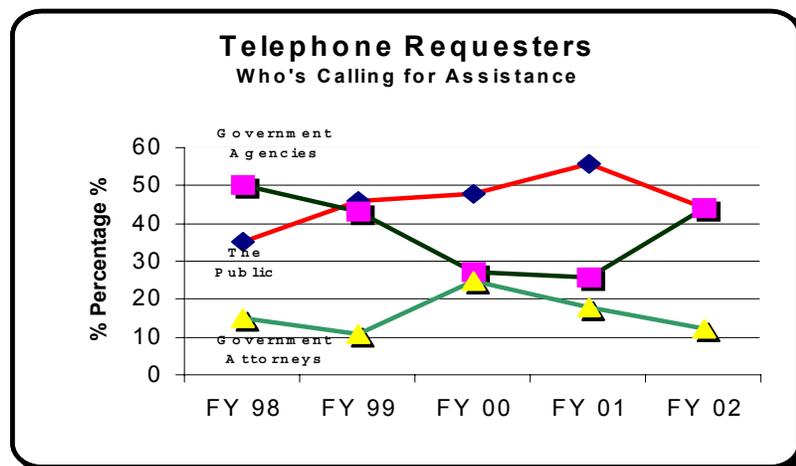


Chart 5

Of the 306 calls from the public, 63% came from private individuals (192 calls), 11% came from businesses, 10% from the news media, 7% from private attorneys, and 6% from public interest groups. See **Table 4** and **Chart 6** on this page.

The Government Caller — When government employees use the Attorney of the Day service they want immediate assistance so that they can respond appropriately and within the time limits imposed by OIP rules. In FY 2001, 44% of the requests for assistance from the Attorney of the Day came from government agencies, and 12% from government attorneys, as shown in **Chart 4** on page 22.



Telephone Requests from the Public FY 2002

Types of Callers	Number of Calls
Private Individual	192
Business	33
Newspaper	26
Private Attorney	22
Public Interest Group	18
Television	4
Health Provider	3
Magazine	1
Other	7
TOTAL	306

Table 4

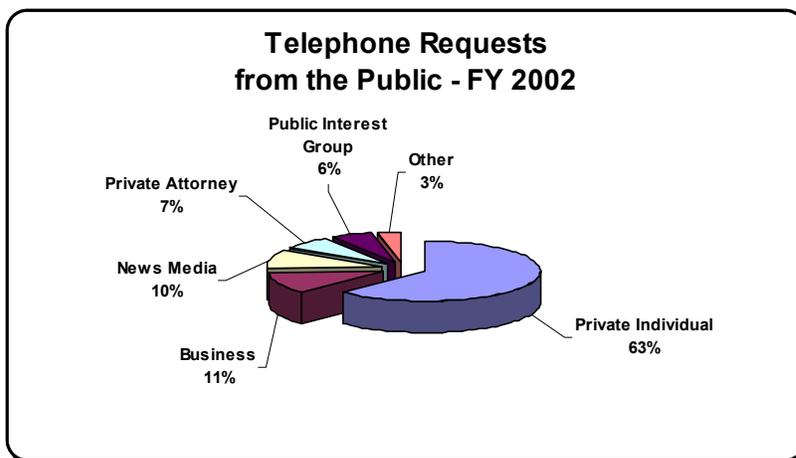


Chart 6



Government Agencies' Calls to the OIP FY 2002

<i>Jurisdiction</i>	<i>Number of Calls</i>
State Executive	207
State Legislature	19
State Judiciary	5
County Executive	43
County Council	13
Federal Agency	2
Unspecified Agency	15
TOTAL	304

Table 5

Which government agencies called the OIP for assistance during FY 2002? Government agencies from the State Executive branch of government made 207 calls, or 68% of the 304 calls from government agencies. Government agencies from the County Executive branches of government made 43 calls, or 14%. For a full breakdown of telephone requests from government agencies received in FY 2002, see **Table 5** and **Chart 7** on this page.

These figures represent a change. Until this year, requests to the Attorney of the Day from the public had increased annually since 1998. Conversely, requests from government agencies increased 42% in FY 2002, while requests from government attorneys declined during the same year. See **Table 3** on page 21 and **Chart 5** on page 22.

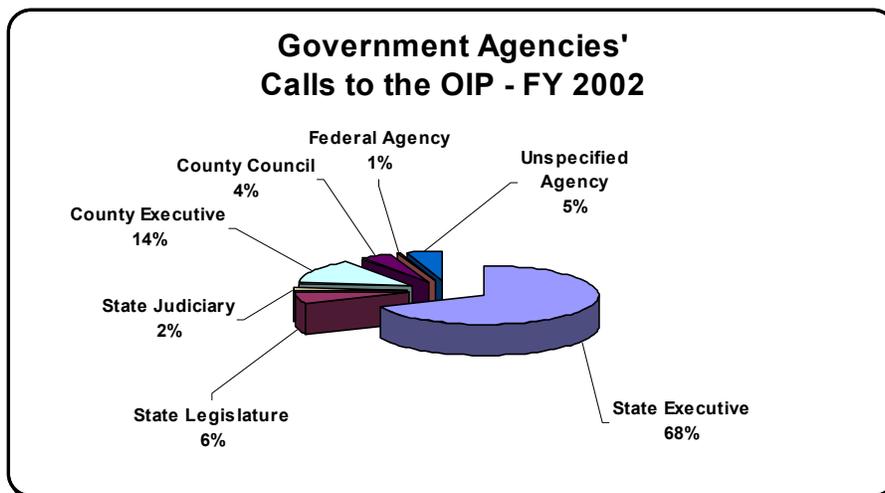


Chart 7

Which Government Agencies Are the Callers Concerned With?

In addition to tracking the type of requester, the OIP also monitors which government agencies are involved when callers need assistance. This helps the OIP evaluate problems with access to government records.

State Executive Agencies

In FY 2002, the OIP received a total of 445 telephone inquiries concerning State agencies, up from 401 inquiries in FY 2001.

About half of this year's calls concerned just seven state agencies: the Department of Health (43), University of Hawaii (34), Department of Commerce and Consumer Affairs (31), Department of Land and Natural Resources (30), Department of Attorney General (29), Office of Information Practices (29), and the Department of Education (25).

Most of the 29 calls relating to the OIP were inquiries about the OIP's work. For the complete list, please refer to **Table 7** on page 27.

Other State Agencies

The OIP received 24 calls about the legislative branch of State government, 22 calls about the judicial branch, and seven calls about the Office of Hawaiian Affairs.

County Agencies

The OIP received 137 calls to the Attorney for the Day for assistance with county government agencies. About half of these calls (69) concerned government agencies in

the City and County of Honolulu. Of these, the largest number (22) of requests concerned the Honolulu Police Department.

The OIP received 68 calls for assistance concerning the other three Hawaii counties: 32 calls about Maui County agencies, 22 about Hawaii County agencies, and 14 about Kauai county agencies. Refer to **Tables 8-11** on pages 28-29 for details.

Requests for Assistance — RFAs

In FY 2002, about 20% of the caseload were requests for assistance that required more involved legal assistance. In these cases, the OIP is asked to provide assistance to the public in a records request dispute.

The staff attorneys will contact the parties to determine the status of the request, review whether the request needs clarification, whether there has been an actual denial of the request, and most times review whether the denial was proper.

In some instances, the OIP is asked to review whether the fees charged by government were proper or were excessive. In quite a few cases, the OIP staff attorneys become involved simply because the government agency has failed to respond to the requester.

Requests for Legal Opinions – RFOs

In FY 2002, 6% of the active caseload were requests for legal opinions. When asked, the staff attorneys will render their opinion on an issue within the jurisdiction of the OIP. Legal issues can fall within the UIPA or the Sunshine Law, chapter 92, Hawaii Revised Statutes. See **Table 6** on this page.

Should a government agency follow the OIP’s legal opinion, the OIP has opined that that action was taken in good faith. Employees whose actions were taken in good faith are immune from liability under section 92F-16, Hawaii Revised Statutes.

Where the OIP is faced with a novel or controversial issue, it will issue a formal opinion letter, will publish and distribute opinion letter widely. Formal published opinion letters are distributed to:

- Holders of the UIPA Reference Manual,
- WestLaw,
- Michie, for annotation in the Hawaii Revised Statutes,

- The Hawaii State Bar Association, for posting online at the HSBA website, and
- Anyone else requesting copies.

The OIP publishes summaries of the formal opinion letters in the OIP’s monthly newsletter, *Openline*, which has a circulation of over 5,000. Further summaries of the formal opinion letters are found in this report on page 36. A link to the opinions posted on the HSBA web site is also available through the OIP’s site at www.state.hi.us/oip.

Where the issue before the OIP has already been addressed in a prior formal published opinion letter, the OIP will issue an informal opinion letter. Informal opinion letters are sent to the parties, and maintained as public records at the OIP’s office. Summaries of some of the informal opinion letters are found beginning at page 31.



**Written Requests
FY 2002**

<i>Type of Request</i>	<i>Number of Requests</i>
Request for Assistance	162
Request for Legal Opinion	11
Total Written Requests	173

Table 6

Calls to the OIP About State Government Agencies - FY 2002



Executive Branch Department	Requests
Health	43
University of Hawaii System	34
Commerce and Consumer Affairs	31
Land and Natural Resources	30
Attorney General	29
Office of Information Practices	29
Education (including Public Libraries)	25
Budget and Finance	22
Labor and Industrial Relations	21
Accounting and General Services	19
Human Services	18
Transportation	17
Governor	16
Business, Economic Development, and Tourism	14
Public Safety	11
Human Resources Development	9
Taxation	8
Agriculture	6
Hawaiian Home Lands	6
Lieutenant Governor	4
Defense	0
TOTAL EXECUTIVE	392
TOTAL LEGISLATURE	24
TOTAL JUDICIARY	22
Office of Hawaiian Affairs	7
TOTAL STATE AGENCIES	445

Table 7



**Calls to the OIP About
City and County of Honolulu
Government Agencies - FY 2002**

Department	Requests
Police	22
City Ethics Commission	8
Budget and Fiscal Services	5
Neighborhood Commission	5
Board of Water Supply	4
City Council	4
Customer Services	4
Corporation Counsel	3
Design and Construction	2
Planning and Permitting	2
Prosecuting Attorney	2
Transportation Services	2
Liquor Commission	2
Mayor	1
Unspecified	3
TOTAL	69

Table 8



**Calls to the OIP About
Hawaii County
Government Agencies - FY 2002**

Department	Requests
County Council	8
Corporation Counsel	3
Public Works	2
Prosecuting Attorney	2
Civil Defense	1
Finance	1
Fire	1
Housing & Community	1
Planning	1
Police	1
Unspecified	1
TOTAL	22

Table 9

**Calls to the OIP About
Kauai County
Government Agencies - FY 2002**



Department	Requests
County Council	6
County Attorney	3
Police	1
Personnel Services	1
Finance	1
Unspecified	2
TOTAL	14

Table 10

**Calls to the OIP About
Maui County
Government Agencies - FY 2002**



Department	Requests
County Council	15
Water Supply	6
Police	4
Finance	1
Mayor	1
Parks & Recreation	1
Corporation Counsel	1
Unspecified	3
TOTAL	32

Table 11

Sunshine Report

Since the OIP assumed jurisdiction over the Sunshine Law (open meetings) in 1998, the OIP has seen steady increases each year in the number of requests related to the law. See **Chart 8** below.

Of the requests to the Attorney of the Day service in FY 2002, 84 were inquiries regarding the Sunshine Law and its application, a 37% increase over the total in FY 2001. In addition, the OIP opened eight case files in response to written requests for assistance. See **Table 12** below.

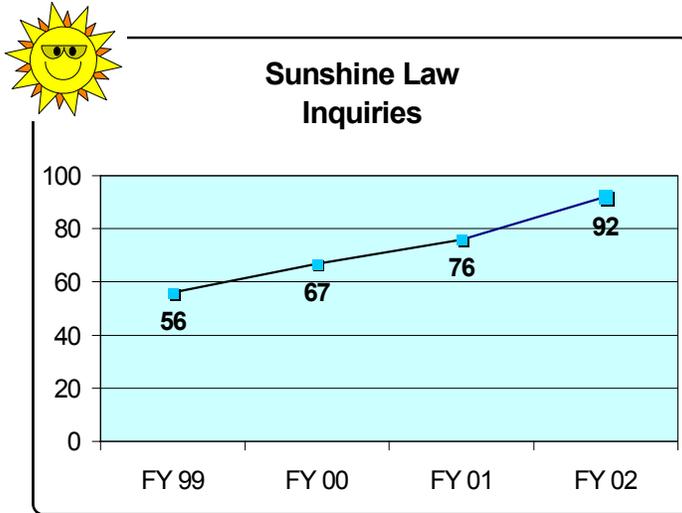


Chart 8

The continued rise in requests for assistance indicates that while the public has increased its awareness of the Sunshine Law and its requirements, some board and commission members have failed to keep pace, prompting increased demand for the OIP’s assistance.

To help government understand the complexities of the Sunshine Law, the OIP continues to provide annual training to newly appointed board and commission members and their staffs.



<i>Fiscal Year</i>	<i>Telephone Inquiries</i>	<i>Written Inquiries</i>	<i>Total</i>
2002	84	8	92
2001	61	15	76
2000	57	10	67
1999	51	5	56

Table 12

Case Summaries and Opinion Letters



The following are summaries of legal assistance provided by the OIP staff attorneys by way of the Attorney of the Day service and informal opinion letters. Summaries of formal published opinion letters begin on page 36.

Extenuating Circumstances and Waiting for an OIP Opinion

An individual who had requested records from an agency received a denial of access, and the legal basis given was that extenuating circumstances applied because the agency had asked the OIP for an opinion on whether the requested records must be disclosed.

The individual asked whether that was a correct use of the extenuating circumstances provision in sections 2-71-13 and -15, Hawaii Administrative Rules.

The OIP advised that extenuating circumstances is not a legal ground for denial of a record request, but instead allows for an extension of time of no more than 20 business days to respond. Even assuming that waiting for an OIP opinion was an extenuating circumstance, it would not justify delaying the response past the 20 business day extension of time.

An agency has the obligation to make a timely response to a record request as provided in chapter 2-71, Hawaii Administrative Rules, and asking the OIP for an opinion on the requested records does not remove that obligation.

Task Force Meeting with a Commission

A caller complained that a task force was to have a meeting with a City and County of Honolulu Commission. The Commission is subject to the Sunshine Law. The meeting was scheduled as an “informational briefing” for which no agenda was posted.

The OIP advised that members of a board subject to Sunshine can meet without regard

In this section:

Extenuating Circumstances and Waiting for an OIP Opinion

Task Force Meeting with a Commission

Filing Notice When Trustees

Attend a Community Meeting

Commission Members Meeting with City Administration

Supervisor’s Access to an Employee’s Personnel File

Archived Records Become Public After 80 Years

Disclosure of Public Comment Letters

Agendas Under the Sunshine Law

Informational Requests

Accessing the Personal Record of Another

Anonymous Testimony

Public Review of a Document to be Discussed at an Open Meeting

Requests for Legal Opinions Phrased as Record Requests

An Agency’s Option to Charge Fees

Confidentiality Agreements

Adding an Agenda Item

to the Sunshine Law only if it is a “chance meeting” at which no board business is discussed, or a “permitted interaction” assembled in accordance with section 92-2.5, Hawaii Revised Statutes.

Filing Notice When Trustees Attend a Community Meeting

Trustees of a State board were invited to a “community gathering” on Hawaii Island. The trustees had assisted this community in obtaining a CIP project. A caller asked whether they had to file an agenda or whether it was a chance meeting.

Chance meetings of board members do not require notices and agendas to be filed because they are meetings at which no board business is discussed.

The OIP advised that while there may be no technical violation of the Sunshine Law in this instance because they do not expect board business to be discussed, it is a good practice to file notice. Filing of a notice would cover situations where someone raises board business, and would serve to bolster the public trust in that board by not giving the impression of inappropriate conduct.

Commission Members Meeting with City Administration

A Commission of the City and County of Honolulu wanted to send two members to a meeting with the City administration on a matter that would likely become board business. The OIP was asked whether it was all right for the two members to go, or whether only one should go.

The OIP advised that since future business of the Commission would likely be discussed, it was best to appoint the two members as board representatives under section 92-2.5, Hawaii Revised Statutes, the “Permitted Interactions” sections of the law.

Supervisor’s Access to an Employee’s Personnel File

A State employee asked to what extent a supervisor has access to an employee’s personnel file. Specifically, the caller asked whether a program supervisor can access individual salaries to compare between other employees and himself.

Under the UIPA, salaries of government employees are public, but only salary ranges are public for certain employees who are union members. Some information in a government employee’s personnel file is public, while some of this information is not.

The OIP advised that agency employees should have access to records carrying significant privacy interests only on an official need to know basis.

Archived Records Become Public After 80 Years

A law enforcement agency was asked by a reporter for records of an 80-year-old case, to which privacy interests may still attach. The reporter told the agency there was a statute that makes all government records public after 80 years.

The OIP advised that section 94-7, Hawaii Revised Statutes, makes all records that have been transferred to the State Archives property of the Archives for posterity. After 80 years, all archived records become entirely public, even if they were once protected from disclosure.

In this case, the records had not been turned over to the State Archives, so section 94-7, Hawaii Revised Statutes, would not apply. Thus, any privacy interests in the records should be adequately protected under the UIPA.

Disclosure of Public Comment Letters

A member of the public sought written comments made to the Department of Transportation (“DOT”) by the public concerning a matter of statewide concern.

The requested record included a list of individuals attending a public meeting, with home addresses, telephone numbers, and email addresses, as well as comment letters. The DOT asked the OIP whether attendees at the public meeting had privacy rights.

The OIP recommended that the agency disclose the names of the attendees, as names generally do not carry a significant privacy interest. Home addresses, telephone numbers, fax numbers, and email, however, may carry significant privacy interests.

Although an argument could be made that the individuals concerned may have waived their right to privacy by submission of the information in a public forum, the OIP recommended that the information listed above, except for names, be redacted, as the individuals concerned may not have anticipated that their home addresses, phone numbers, etc., would be made public by the DOT.

Agendas Under the Sunshine Law

The OIP received a call from a county agency concerning a vacancy on the County Council caused by the death of a Council member. An agenda was filed and posted at least six days before a proposed meeting, and listed the vacancy as an agenda item. The caller wanted to know if the agenda was sufficiently detailed.

The Sunshine Law requires that an agenda list “all of the items to be considered at the forthcoming meeting.” Haw. Rev. Stat. 92-7 (Supp. 2001). The caller stated that the Council did not have a specific individual in mind to fill the position.

The OIP advised that there are no Supreme Court or OIP opinions concerning the specificity required in an agenda, although the OIP recommends that agendas be sufficiently specific so that adequate notice can be given of what a board is intending to do, so that members of the public can decide whether to participate in, or attend, a particular meeting.

Informational Requests

An agency requested assistance on how to reply to requests for information when the agency does not have the information in a “government record.”

The UIPA’s definition of “government record” states that it is “information maintained by an agency in auditory, visual, electronic or other physical form.” Haw. Rev. Stat. § 92F-3 (1993).

Sometimes a particular agency employee may have knowledge or information, but that knowledge or information is not recorded. If that is the case, agencies are not obligated to create a record to satisfy a request for information, as the UIPA does not govern information that has not been recorded in some fashion. Thus, if a request is informational in nature, and is not a request for records, the UIPA is not implicated.

A requester is entitled to make a request for information, but if the agency does not maintain that information in a record, the agency is not required to create a record, under section 92F-11(c), Hawaii Revised Statutes, which provides that, “[u]nless the information is readily retrievable by the agency in the form in which it is requested, an agency shall not be required to prepare a compilation or summary of its records.”

Accessing the Personal Record of Another

A record request was made for the personal record of another individual. The agency advised the requester that it could not provide access to the personal record of another individual.

The OIP advised that, under the UIPA, although a government record may meet the definition of “personal record,” if a person other than the person it is about requests the record, the record should be made available, unless one of the UIPA’s exceptions applies. As the UIPA’s 1988 legislative history explains:

“requests for access to personal records (i.e., by others) will be handled by the preceding sections of the bill . . . [Part II of the UIPA, ‘Freedom of Information’] . . . In this way, the very important right to review and correct one’s own record is not confused with general access questions.”

S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess., S.J. 689, 690 (1988); H. Conf. Comm. Rep. No. 112-88, 1988 Reg. Sess., Haw. H.J. 817, 818 (1988).

Put another way, under the UIPA, if the record requested is not a personal record of the requester, it is a “government record” and the law governing access is set out in part II of the UIPA.

Anonymous Testimony

Because of anthrax concerns, a County Council wanted to begin a policy of not accepting written anonymous testimony, and throwing away mail with no return address. The County Council proposed to announce the new policy first, and then begin following it.

The OIP advised that section 92-3, Hawaii Revised Statutes, requires a board to accept written testimony from interested parties, and does not require that testifiers identify themselves first. The Council may ask the public to submit anonymous written testimony in a way that allays safety concerns, such as by email, or by physical mail with a return address on the envelope but none on the testimony and a request that the Council throw away the envelope.

The OIP advised, however, that if the Council nonetheless receives testimony by mail with no return address, then unless there is reason to think that a particular letter might pose a threat to health or safety, the Council should accept the anonymous testimony.

Public Review of a Document to be Discussed at an Open Meeting

A member of the public and a county agency asked the OIP whether a board violated the Sunshine Law by discussing a document at an open meeting which had not been provided to the public before the meeting.

The OIP advised that the Sunshine Law does not require that a document to be discussed at an open meeting be made publicly available prior to the open meeting, although the discussion must be listed on the agenda published six or more days before the meeting. Some boards may have internal rules that require a document (for instance, a bill) to be published before a meeting; however, that would not be required by the Sunshine Law.

The OIP also advised that under the UIPA a document discussed at an open meeting may become public by virtue of the public discussion, even though the document would have fallen within an exception to disclosure prior to its discussion at the open meeting, as explained in OIP Opinion Letter Number 91-22 (November 25, 1991).

Requests for Legal Opinions Phrased as Record Requests

A state agency received several requests for legal opinions or information that were phrased as record requests. For instance, the agency received a request for all laws and rules governing the behavior of prisoners at a correctional facility.

The agency found such requests confusing as to whether they were intended to apply to all laws past and present, and the agency was also concerned that a response would require a legal opinion that the agency was not qualified to give. The agency requested guidance from the OIP as to how to deal with such requests.

The OIP advised that an agency should take care to respond in good faith to record requests. The UIPA, however, does not require an agency to provide legal opinions to requesters, nor to provide answers to interrogatories.

If a request is unclear as to what records are actually sought, or whether the requester is actually seeking a legal opinion from the agency, or whether the request is truly intended to be as broad as it appears, the agency can request clarification under section 2-71-14(c), Hawaii Administrative Rules.

An Agency's Option to Charge Fees

A state agency had not charged fees for record requests in the past, but was faced for the first time with a voluminous request. The agency asked whether it was required to charge fees for search, review, and segregation, or whether the fees were discretionary.

The OIP advised that the agency can waive all search, review, and segregation fees if it wishes. The agency is required to waive the first \$30 of fees in any case, which means that a small request will typically incur no search, review, and segregation fees.

Confidentiality Agreements

Two state agencies asked whether they could enter into confidentiality agreements. In one instance, a private company negotiating for a land lease asked for a confidentiality agreement. In the other, a board hearing a contested case was presented with a settlement agreement between the parties to the case, which was marked as confidential.

The OIP advised both agencies that marking documents submitted to a government agency as confidential, or agreeing with the agency to keep documents confidential, does not necessarily mean that the documents will not be public under the UIPA. The documents must still fall within an exception to the UIPA before they can be withheld.

Adding an Agenda Item

A county board wanted to add an agenda item, of reasonably major importance, to a published agenda. There were still more than six days before the meeting date. However, section 92-7(d), Hawaii Revised Statutes, appears to say that a board shall not change a filed agenda to add an item of reasonably major importance.

The board asked whether it could file a "revised" agenda, or whether it needed to cancel the meeting and re-file the notice and new agenda as a new meeting.

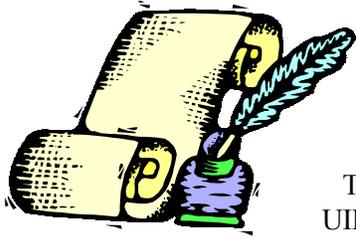
The OIP advised that to be conservative, the board should cancel the meeting and then re-notice it as a new meeting with the new agenda, instead of filing a "revised" agenda. Because the scheduled meeting date was more than six days away, the board could re-notice the meeting for the same date.



OIP Opinions 2001-2002

OIP Opinion Letter No. 01-03: **Disclosure of Inmate Information**

A private company, Verifacts, Inc., asked the Department of Public Safety (“PSD”) for a copy of inmate data that PSD maintains in its database. The Department of the Attorney General asked the OIP for written guidance regarding the record request.



The OIP noted that under the UIPA’s mandatory disclosure provision, section 92F-12 (a)(4), Hawaii Revised Statutes, government agencies are required to disclose “directory information concerning an individual’s presence at any correctional facility.”

The OIP therefore advised that PSD is required to disclose directory information concerning an individual’s presence at a correctional facility. Directory information is limited to names and locations of covered individuals.

Other inmate information should be disclosed subject to the personal privacy and frustration exceptions at section 92F-13, Hawaii Revised Statutes.

PSD may withhold information such as social security number, birth date, complexion, gender, hair and eye color, race, and personal financial information, in which individuals have a significant privacy interest, when the privacy interest of the individual outweighs the public interest in disclosure of that information. In addition, PSD has the discretion to withhold

from disclosure information that must be confidential in order to prevent the frustration of a legitimate government function.
[OIP Op. Ltr. No. 01-03, September 17, 2001]

OIP Opinion Letter No. 01-04: **Disclosure of Sexual Harassment Complaint Investigation Records**

The Research Corporation of the University of Hawaii (“RCUH”) administers research projects for the University of Hawaii. During one project, an Equal Employment Opportunity complaint was filed alleging sexual harassment.

After investigating the complaint, the RCUH wrote a Closing Report and issued two formal letters of determination (“investigative records”) to the subject of the complaint (“Subject”) and to the complainant. The letters stated that the RCUH found that there was no evidence to support a breach of the RCUH Sexual Harassment policy or EEO policy, and that the case was closed.

The Subject asked the RCUH for copies of the investigative records pertaining to the sexual harassment claim filed against him. The RCUH asked the OIP for an opinion on whether the letter to the complainant and the RCUH’s Closing Report for the case must be disclosed to the Subject.

The OIP advised the RCUH that the investigative records must be disclosed to the Subject of the complaint, except for information that may be withheld from disclosure

under section 92F-22(2), Hawaii Revised Statutes. This section allows agencies to withhold records or information the disclosure of which would reveal the identity of a source who furnished information under an express or implied promise of confidentiality.

Normally, section 92F-22(2), Hawaii Revised Statutes, protects only witness names, and not the information provided by that source. In this instance, however, because the witnesses came from a small group of people who worked closely together, disclosure of the information provided by witnesses would likely lead to the actual identification of each witness.

Therefore, redaction of the witness statements, and other information that would allow identification of witnesses is warranted in order to protect their identities.

[OIP Op. Ltr. No. 01-04, October 29, 2001]

OIP Opinion Letter No. 01-05: Attorney Work Product

An employee of a state agency sought to obtain a copy of a letter containing legal advice from the Department of the Attorney General concerning a State agency's Internet access policy.

The UIPA sets forth a list of government records that are not required to be disclosed. Haw. Rev. Stat. § 92F-13 (1993). The list includes "government records pertaining to the prosecution or defense of any judicial or quasi-judicial action to which the State or any county is or may be a party, to the extent that such records would not be discoverable." Haw. Rev. Stat. § 92F-13(2) (1993).

In this section:

Disclosure of Inmate Information

*Disclosure of Sexual Harassment
Complaint Investigation Records*

Attorney Work Product

Public's Right to Testify

*Routing Record Requests Through an
Agency's Executive*

*Request for Disclosure of Settlement
Agreement Between an Agency
and a Private Party*

*Limits on Oral Testimony at County
Council Meetings*

*Records Protected from Disclosure
by Court Order*

*Reports of Real Property Interests Held
or Acquired by Foreign Persons*

This section exempts from disclosure any government records that would be protected under the "attorney work product doctrine." That doctrine is expressed in Hawaii Rules of Civil Procedure Rule 26(b)(3), and protects an attorney's mental impressions, conclusions and opinions. The requested record discussed legal strategies behind decisions made or contemplated by the State agency.

As the employee had a concern with legal problems before the State agency contacted the Department of the Attorney General, it was determined that the attorney work product doctrine protected the letter from disclosure as it was prepared in anticipation of litigation. Any factual information in the letter, however, would not be protected from disclosure.

[OIP Op. Ltr. No. 01-05, December 14, 2001]

OIP Opinion Letter No. 01-06: Public's Right to Testify

A member of the City Council requested an opinion regarding compliance by the Honolulu Liquor Commission ("Liquor Commission") with the Sunshine Law.

The OIP found that the agenda for the meeting held April 9, 1998, failed to notify the public that the Liquor Commission would deliberate or decide on a set of proposed rule revisions previously considered on December 10, 1997. The Liquor Commission held separate meetings on March 19, 1998, and April 9, 1998.

The OIP found that the Liquor Commission, at its April 9 meeting, violated the Sunshine Law by prohibiting public testimony on the agenda item listed as "Decision-making on Proposed Rules of the Liquor Commission (Continued from March 19, 1998)."

Even when the public has had an opportunity to testify on an agenda item at a previous meeting, the Sunshine Law requires a board to afford interested members of the public an opportunity to present oral or written testimony on any agenda item at every meeting.

The OIP found no conflict between section 91-3, Hawaii Revised Statutes, and section 92-3, Hawaii Revised Statutes. Section 91-3, which requires a public hearing as part of the rulemaking process, does not prohibit an agency from accepting public testimony on the date the agency announces its decision as to proposed rule revisions. Thus, it is possible for a board to follow both section 91-3 and the Sunshine Law without violating either.

Further, a board subject to the Sunshine Law may make its decision on proposed rule revisions at a later date than the public hearing without accepting further public testimony during its decision making, by continuing the decision making portion of the public hearing or meeting to a reasonable day and time as provided by section 92-7(d), Hawaii Revised Statutes.

[OIP Op. Ltr. No. 01-06, December 31, 2001]

OIP Opinion Letter No. 01-07: Routing Record Requests Through an Agency's Executive

A member of the Maui County Council requested an opinion on whether section 3-8 of the Charter of the County of Maui can require Council members to route requests to county agencies for public information through the Mayor's office.

The OIP found that the county charter cannot require this routing. The UIPA allows "any person" access to government records. Should an executive choose to institute a routing system for record requests, however, the executive should ensure not to discriminate against a particular class of "persons" who are entitled by law to request records, such as council members.

In addition, while the UIPA does not prohibit routing of all requests for government records through the executive of a government administration, the OIP does not recommend that such a practice be standard operating procedure.

Such a routing of record requests through a central office will likely cause unnecessary delays in the receipt of public records, which would violate the UIPA's policy that the public be given accurate, relevant, timely, and complete government records. Haw. Rev. Stat. § 92F-2 (1993).

This practice may also violate the time limits and procedures for processing record requests that are set forth at section 2-71-13, Hawaii Administrative Rules.

[OIP Op. Ltr. No. 01-07, December 31, 2001]

OIP Opinion Letter No. 02-01: Request for Disclosure of Settlement Agreement Between an Agency and a Private Party

A reporter requested an opinion concerning public access to a settlement agreement (“Agreement”) between an individual and the University of Hawaii (“University”). The lawsuit involved the right to profits derived from research into the genetic cloning of animals conducted at the University.

The OIP informed the University that settlement agreements between agencies and members of the public are generally public documents required to be disclosed under the UIPA, and asked the University to provide the OIP with the record for confidential review to determine if the UIPA requires disclosure.

After the University refused to turn the record over to the OIP absent a court order requiring disclosure, the Attorney General assigned a deputy to represent the OIP. A Petition to Examine Records of Agency was drafted for filing in Circuit Court. Shortly before the suit was to be filed, the University agreed to turn over the Agreement to the OIP.

The OIP reviewed the Agreement, and found that the Agreement contains no information that would qualify as a significant privacy interest, and that the Agreement does not contain information that would not be discoverable in a judicial or quasi-judicial action to which the University is or may be a party. The OIP also found that disclosure of the Agreement would not cause the frustration of a legitimate government function.

Regarding confidentiality agreements, the OIP found that a confidentiality provision in a settlement agreement that contravenes the agency’s duty to the public is impermissible under Hawaii law.

The OIP found that a government agency has a statutory duty, under the UIPA, to provide the OIP with documents for examination by the OIP for the purpose of conducting inquiries regarding compliance with the UIPA by an agency, and for the investigation of possible violations by an agency.

[OIP Op. Ltr. No. 02-01, February 1, 2002]

OIP Opinion Letter No. 02-02: Limits on Oral Testimony at County Council Meetings

Common Cause Hawaii filed a complaint regarding oral testimony at Honolulu City Council (“Council”) meetings.

Two issues were involved: (1) whether the Council’s practice of allowing oral testimony at public meetings only if persons wishing to testify sign up by a certain time is allowed under the Sunshine Law; and (2) whether the Council’s practice of placing time limits on oral testimony is allowed under the Sunshine Law.

On the first issue, requiring persons wishing to testify to sign up by a certain time, the OIP found that oral testimony must be allowed even if a person wishing to testify did not sign up. The Sunshine Law requires that boards shall afford all interested persons an opportunity to present oral testimony on any agenda item; and that boards may provide for reasonable administration of oral testimony by rule. Haw. Rev. Stat. § 92-3 (1993).

In light of the fact that the law allows “all interested persons” to present oral testimony, the OIP does not believe it is reasonable under section 92-3, Hawaii Revised Statutes, to require testifiers to sign up by a certain time. Such a requirement would preclude all latecomers from testifying orally, as well as those who are not familiar with Council rules.

This is not to say that boards cannot *request* that persons wishing to testify orally sign up by a certain time in the interest of time management. After all those who signed up have testified, boards should inquire whether any other audience members wish to testify orally, and should not preclude such persons from testifying. If time is running short, boards have the option of continuing meetings in accordance with section 92-7(b), Hawaii Revised Statutes.

On the second issue, placing time limits on oral testimony, the Sunshine Law allows boards to provide for reasonable administration of oral testimony by rule. Haw. Rev. Stat. § 92-3 (1993).

So long as the Council's time restrictions on testimony meet the requirements of the Sunshine Law and the Freedom of Speech and Equal Protection Clauses of the United States Constitution, the Council may put reasonable time limits on oral testimony pursuant to rules adopted under section 92-3, Hawaii Revised Statutes.
[OIP Op. Ltr. No. 02-02, May 28, 2002]

OIP Opinion Letter No. 02-03: Records Protected from Disclosure by Court Order

A litigant asked the OIP to opine on the issue of whether a person can access a record maintained by a State or county agency when the record is sealed by a court order.

In the process of discovery in the lawsuit, the litigant had subpoenaed records from the Honolulu Police Department. The Honolulu Corporation Counsel had filed a motion to quash (suppress) the subpoena, and a judge entered an order limiting the litigant's access to the records.

The OIP determined that under the UIPA the records could be withheld. Whether the records sought were government records (information maintained by an agency), or personal records (information about an individual maintained by an agency), there is an exception to the affirmative duty to disclose government records where there is a court order protecting those records. There is also an exception to the required access to a personal record where so authorized by a judicial decision.

The OIP noted that the UIPA and the discovery process are two distinct methods of obtaining access to documents, and that the UIPA does not require government records to be disclosed if a judge determines they are exempted. Therefore, in order to obtain access to the records, the litigant would have to follow procedures required by court rules.
[OIP Op. Ltr. No. 02-03, May 28, 2002]

OIP Opinion Letter No. 02-04: Reports of Real Property Interests Held or Acquired by Foreign Persons

The City and County of Honolulu ("City") must make some information about real property interests held or acquired by foreign persons public. Section 8-14.2, Revised Ordinances of Honolulu ("Section 8-14.2") mandates that foreign property owners report certain information to the City. The City, in turn, reports this information in aggregate form to the City Council.

Some of the information required to be reported under Section 8-14.2 is also contained in other records that are required to be disclosed under section 92F-12(a)(5), Hawaii Revised Statutes, or that are otherwise public. The City should disclose otherwise public

information upon request, as disclosure would not be a clearly unwarranted invasion of personal privacy. This includes names and addresses of real property owners, assessed value of real property, and consideration paid.

Disclosure of citizenship information concerning foreign individuals, or natural persons, would be a clearly unwarranted invasion of personal privacy, under section 92F-13(1), Hawaii Revised Statutes. Disclosure of citizenship information about non-natural persons would not be, however, as only individuals have privacy interests.

Names and addresses of officers and directors of foreign corporations, and of partners in foreign limited partnerships, that are publicly available in annual reports filed with the Department of Commerce and Consumer Affairs, must be made public by the City, as disclosure would not be a clearly unwarranted invasion of personal privacy.

Disclosure of names of shareholders of foreign corporations, and trustees, and beneficiaries of foreign trusts that own real property would not be a clearly unwarranted invasion of personal privacy if that information is already in the public domain. Whether the information is in the public domain may need to be determined on a case by case inquiry.

Home addresses of shareholders of foreign corporations and of trustees of foreign trusts that own real property that are not in the public domain should not be disclosed. Business addresses may be disclosed.

[OIP Op. Ltr. No. 02-04, June 26, 2002]



Legislation

The OIP is required to review legislation and make recommendations to the



Legislature. One of the goals of the UIPA is to provide for uniform legislation in the area of government information practices.

To further this goal, the OIP monitors proposed legislation that may have an impact on the UIPA and on government's practices in the collection, use, maintenance, and dissemination of information.

Work in the 2002 Legislative Session

In 2002, the OIP reviewed and monitored 194 legislative initiatives as they progressed through the Legislature. All of the bills tracked by the OIP in 2002 affected government's information practices, public access to government records and meetings, or the privacy rights of individuals. The OIP staff attorneys and Director appeared frequently at the Legislature to testify about bills insofar as they related to these subjects.

Consultation

The OIP consulted with several government agencies and elected officials in the drafting of proposed bills during the 2002 legislative session. Highlights of the OIP's efforts in this regard are also discussed in the following sections.

Funding of the OIP (HB 1800)

Initially this budget bill did not include any general funding for the OIP, and sought funds for the OIP from the Hurricane Relief Fund. As adopted, HB 1800, which became Act 177, included general funding for the OIP for fiscal year 2003, but reduced by two percent.

Adult Residential Care Homes (HB 1749)

This bill, which became Act 166, requires the Department of Health to disclose to adult residential care home operators the prior criminal history of certain prospective residents under certain circumstances.

The bill requires release of the record of an individual's conviction of a violent crime, or acquittal of such a crime by reason of a physical or mental disease, disorder, or defect. The OIP testified that both types of records are public information, which the public can access at the Hawaii Criminal Justice Data Center. The OIP did not object to a required disclosure of public information.

Juror Privacy (HB 2304)

This bill, which became Act 92, ensures the legitimate privacy expectations of citizens summoned for jury duty, while not diminishing the right of litigants to a fair and impartial jury, and the rights of the public to open court proceedings.

The OIP assisted the Judiciary in drafting the original language of this law, and testified in support of its passage.

Cave Protection (SB 2898)

Act 241 protects Hawaii's caves and the unique cultural and natural resources inside them.

The OIP supported the House version (HB 2659), which allowed the Department of Land and Natural Resources ("DLNR") to determine the confidentiality of cave location or resource information. However, the Senate version, which allows a cave owner to unilaterally require the DLNR to keep the information confidential, was adopted at conference.

Birth Defects (SB 2763)

Act 252, which became effective July 1, 2002, establishes a birth defects program in the Department of Health.

The OIP testified in support of the purposes of the birth defects program, which are to provide for better information on the causes and treatments of birth defects, and to ensure that families obtain information about available services.

The OIP testified, however, that it was concerned that certain provisions of the bill, as originally introduced, intruded on the right to privacy. As finally amended, the Act requires health care providers to report information pertaining to birth defects. That requirement, however, does not apply where a parent or guardian files a written objection to the collection of the information, because of religious beliefs.

Additionally, Act 252 requires that before a researcher can contact a parent or guardian, the researcher must obtain the physician's approval. Additional safeguards in the bill require that information provided be used only for advancing medical and public health research, medical education, or education of the public, and require the approval of an

institutional review board (a specially constituted review body established or designated by an entity to protect the welfare of human subjects recruited to participate in biomedical or behavioral research).

Identity Theft (HB 2438)

This bill, which became Act 224, makes identity theft a crime. The OIP testified in support of this law's intent to protect privacy.

Hawaii Long-Term Care Financing Act (HB 2638)

This bill, which became Act 245, created the Hawaii long-term care financing program to provide a universal and affordable system of providing for long-term care.

The OIP testified on early versions of the bill, as they contained provisions allowing use of individuals' social security numbers as identifying numbers. The OIP recommended that a random number be used instead. Those provisions were ultimately entirely deleted.

Hawaii Long-Term Care Financing Act (SB 2416)

This bill, which became Act 251, requires that a long-term care summit be convened to collaborate and identify the types and quality of services, service delivery system, and service delivery policies to ensure the development of a comprehensive and affordable long-term care system for Hawaii.

The OIP testified on early versions of the bill, as they contained provisions allowing use of individuals' social security numbers as identifying numbers. The OIP recommended that a random number be used instead. Those provisions were ultimately entirely deleted.

Insurance (HB 1761)

Act 74 gives the Insurance Commissioner power to regulate health insurance rates. The OIP testified in support of the bill's intent, but requested that the measure require all records to be subject to disclosure as required by the UIPA. The OIP's request, however, was not adopted.

Captive Insurance (SB 3040)

Act 157 gives the Insurance Commissioner discretion to decide whether to publicly release information filed by a captive insurance company that was not already a government record. The OIP testified in opposition to this bill.

The only guideline in the bill to direct the commissioner in making records public is a vague one: when the "interest of the policyholders, shareholders, or the public will be served. . ." By contrast, the UIPA contains specific guidelines that have been developed and tested by judicial and OIP opinions, and provides the structure to enable the commissioner to withhold access to documents when warranted.

The OIP opposes the creation of new confidentiality statutes in general because they tend to be over-broad, hiding more data from the public than is truly necessary for a problem to be solved.

Health Insurance (SB 2093)

SB 2093 would have established immunity from civil liability for a person who reports insurance fraud, except in the case of malicious reporting or perjury.

Although the OIP took no position on the substance of the bill, the OIP did testify

against the bill's provision giving the Insurance Commissioner the discretion to determine the confidentiality of complaints, investigation reports, working papers, proprietary information, and other information concerning the reports of insurance fraud.

The OIP testified that the records the bill sought to protect, when appropriate, would already be permitted to be withheld from disclosure by the UIPA, and questioned why a government regulator should have extraordinary discretion to keep information secret.

The OIP testified that it generally objects to new statutory provisions establishing confidentiality, as such statutes tend to harm the public access interest, and make government less accountable to the public. Such statutes also tend to conceal information which should be a part of the public record, create confusion, and may result in diminished access to government records. The Governor vetoed this measure on June 21, 2002.

Auditor's Records (HB 2231)

This bill would have allowed the State Auditor to obtain information from the Departments of Education and Health - when auditing federal or State supported educational programs or in connection with enforcement of related legal requirements - without first obtaining consent from individuals to whom the information pertains, and would have made the Auditor liable for breaches of confidentiality.

The OIP testified in support of this bill because it would make government accountable through the audit function. The Governor vetoed the bill on June 21, 2002.



Administrative Rules



The OIP is tasked by statute to adopt the following sets of administrative rules.

Uniform Standards for Disclosure of Records for Research Purposes

During the past fiscal year, the OIP was identifying policy considerations that relate to issues involving access to government records for research purposes.



Administrative Appeals

The OIP is continuing internal review of these proposed rules - which would allow a record requester to appeal a denial of access by any government agency to the OIP - and will be revising both the draft rules, and the draft impact statement.

Personal Record Requests

These rules will apply only to requests by an individual for his or her own personal records. Part III of the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (“UIPA”) governs access to one’s own personal records.

Records Collection Practices

As was reported last year, the Department of the Attorney General completed its formal review of these draft rules, which would prescribe what and how agencies should collect information. Public hearing on these proposed rules will eventually follow.

Records Report System

Under section 92F-18(b), Hawaii Revised Statutes, each agency of the State and county executive, legislative, and judicial (administrative functions only) branches of government is required to “compile a public report describing the records it routinely uses or maintains using forms prescribed by the office of information practices.” The UIPA requires that these reports be open to public inspection and be updated annually.



To automate the collection of this information, the OIP developed the Records Report System (“RRS”). The RRS is a computerized database designed to collect the public report of each agency, and serves as a repository for all the public reports. The RRS features browse and query functions for accessing the information.

Key Information: What’s Public

Information in the RRS allows a statistical look at State and county government records. The RRS allows one to determine what percentage of these records are public records and what percentage are not. Thus, when a government agency receives a request for a record, it can use the RRS to make an initial determination as to the record’s classification.

Although in most cases the OIP has not reviewed the access classifications, agencies themselves report that only 16% of their records are unconditionally confidential, with no public access permitted.

By contrast, roughly three out of four records are available to the public in whole or in part (see **Chart 10** on this page). Nonetheless, this represents a one percent decrease since 1997 in records classified as unconditionally open to the public.

Of all the records reported on the RRS, 59% are accessible to the public in their entirety. Another 21% are in the category “confidential/conditional access,” as displayed in **Chart 10**. Most records in this category are accessible after the segregation of confidential information (14% of the total records). The other records in this category are accessible only to those persons, or under those conditions, described by specific statutes (7% of the total records).

The record reports themselves, which only describe government records, contain no confidential information and are completely public.

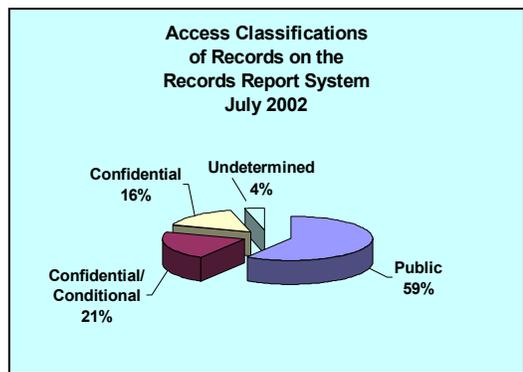


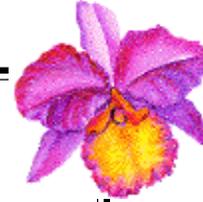
Chart 10

In addition, government agencies are able to add and edit their own record reports and to generate a variety of reports about their records report information on the RRS.

Status of Records Report

Since the beginning of 1994, when the first record report was added to the system by the Office of the Ombudsman, State and county agencies have reported 33,649 sets of records (as of July 1, 2002). Each “set” of records is generally a record title, and may be a form or other record. The OIP received no new reports in the past year. For a summary, see **Table 13** on page 47.





Records Report System

**Status of Records
Reported by Agencies:
2002 Update**

Jurisdiction	Number of Records
State Executive Agencies	24,169
Legislature	816
Judiciary	1,645
City and County of Honolulu	4,433
County of Hawaii	976
County of Kauai	861
County of Maui	749
Total Records	33,649*

* This total includes 30,147 "live" records that can be browsed by all users, 105 records on disk awaiting upload, and 3,397 records still being edited by agencies and accessible only to those agencies, as of **July 1, 2002**.

Table 13

Informing the Community

Publications and Web Site

The OIP's publications play a vital role in the agency's ongoing efforts to inform the public and government agencies about the UIPA, the open meetings law, and the work of the OIP.



OpenLine

In FY 2002, the OIP continued its traditional print publications, including the monthly *Openline* newsletter and the *Office of Information Practices Annual Report 2001*. In addition, the OIP continued to expand the web site that it launched on the Internet in April 1998. Visitors to the site have increased greatly each year.

Openline

The *Openline* newsletter, which originated in March 1989, has always played a major role in the OIP's educational efforts. This past year, the OIP distributed over 5,000 copies of

each issue of the *Openline* throughout Hawaii and the United States, as well as internationally. In Hawaii, the newsletter goes out to all State and county agencies, including boards and commissions, and also to members of the public, the news media, the private sector, and libraries throughout the state.

Current and past issues of the *Openline* are also available at the OIP's web site. Recent articles have covered such topics as access to personal records, bills in the Legislature affecting information practices, using the OIP's model forms, fielding record requests, meeting notices and agendas online, and the OIP's Attorney of the Day service. The *Openline* also publishes summaries of recent OIP opinion letters.

The OIP's Web Site

The OIP's web site, at www.state.hi.us/oip, has quickly become the agency's primary means of publishing information. It plays a major role in educating and informing government agencies and citizens about access to State and county government records and meetings.

With a decreased budget in the past few years, and consequently limited resources for training, the OIP views the site as an even more valuable educational tool.



Visitors can access the State's public records law and Sunshine Law, read the OIP's current and past *Openline* newsletters, study the agency's most recent annual report, look at the administrative rules, print the model forms "Request to Access a Government Record" and "Notice to Requester," link to the OIP's formal opinion letters, browse the subject index for the opinion letters, and receive general guidance for commonly asked questions.

The OIP site also serves as a gateway to web sites on public records, privacy, and informational practices in Hawaii, the USA, and the international community.

The OIP developed its site in-house, with the technical assistance of the State Information and Communications Services Division of the Department of Accounting and General Services, and the Campaign Spending Commission. The OIP is working to redesign its site to make it even easier to use, including search features.

Visitor Boom Online: Use of the Site Continues to Rise

From its inception, the OIP site has received a substantial number of Internet visits. That number continues to grow each year, as illustrated in **Chart 9** on this page. In FY 2002, the volume of traffic on the site jumped by 11% over the previous year.

There were 186,704 "hits" (requests for web site files) in FY 2002, compared to the 168,384 requests in the prior fiscal year. The monthly average was 15,559 requests, up from 14,032 requests per month in FY 2001. The site received an average of 528 requests per day in FY 2002, compared to the year before, when the daily average was 463 requests.

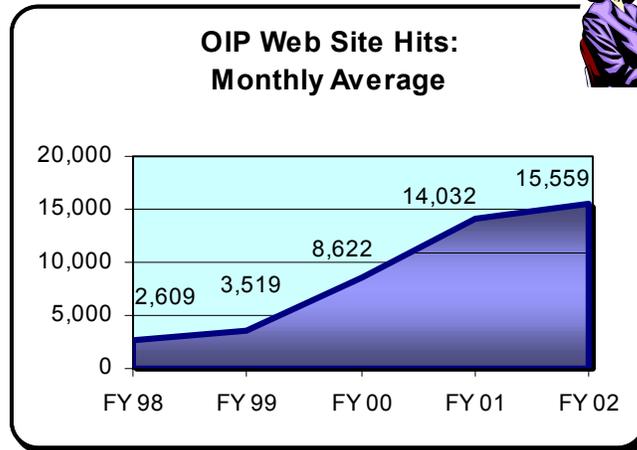


Chart 9

Most visits were directed at the home page, the Rules, UIPA and Sunshine Law, annual reports, opinions, *Openline*, links, and guidance. Many callers to the OIP throughout the year mention the site and its features, and many others are directed to the resources available to them there.

Features

The web site is updated weekly. For those unfamiliar with the OIP, the home page gives a quick overview of the agency, and the Director's Message goes into more detail. The site features a "Contents" bar at the left on each page to help visitors navigate. The contents include the following sections.

"OIP Openline"

The monthly *Openline* newsletter is available online. Back issues, beginning with the November 1997 newsletter, are archived here and easily accessed.

"Opinion Letters"

The OIP's attorneys have been publishing formal opinion letters since 1989. The site includes a link to the full text of these opinion letters, which now total 244 letters. The OIP added a subject index for the opinion letters in 2001.

“Guidance”

The site offers practical help for frequently asked questions from government agencies and members of the public. What types of records are public? What are the guidelines for inspecting government records? What are agencies’ responsibilities to individuals? What are the possible responses to your record request? What are an individual’s rights if denied a record? Answers to these and other questions are available online 24 hours a day, seven days a week.

“The Law”

The Guidance pages include links to the relevant sections of the UIPA. The site features the complete text of the UIPA and the Sunshine Law, with quick links to each section. Using an Internet browser, a visitor can perform a key word search of the law.

“Administrative Rules”

Visitors can access adopted and proposed OIP rules: (1) the public records rules, which became effective February 26, 1999; and (2) the proposed appeals rules.

The first section, “Rules: Public Records,” includes the full text of “Agency Procedures and Fees for Processing Government Record Requests.” It also features a quick guide to the rules, the OIP’s Impact Statement, and a statement on amendments made to the rules following public hearings. Visitors can also view and print the two model forms created by the OIP to help implement this rule. These forms are entitled “Request to Access a Government Record” and “Notice to Requester.”

The second rules section contains the text of the first draft of the OIP’s proposed appeals rules. These rules would govern appeals to the OIP of government agencies’ denial of access to public records. The section also includes an impact statement. Future notices and drafts of the appeals rules will appear in this section.

The rules sections also link to the Lieutenant Governor’s web site, which hosts, or links to, all of the State’s administrative rules.

“Annual Report”

Beginning with the annual report for FY 2000, the OIP’s annual reports are now available online for viewing and printing.

“Other Links”

To expand a search, visit the growing page of links to related sites: Hawaii government, freedom of information, privacy, and agencies in the United States, Canada, and elsewhere responsible for freedom of information and privacy protection.

Another page provides a directory that tells where to call for other government information, including State, county, and federal telephone numbers.

Model Forms

The OIP has prepared, and makes available, model forms that agencies and members of the public may use to follow the procedures set forth in the OIP's rules for making, and responding to, record requests.

For making a request to an agency, members of the public may use the OIP's model form "Request to Access a Government Record." Agencies may respond to a record request using the OIP's model form "Notice to Requester."

The model forms may be obtained online at the OIP's web site, www.state.hi.us/oip.

REQUEST TO ACCESS A GOVERNMENT RECORD

DATE: _____

TO: _____

FROM: _____
NAME OF AGENCY
CITY/STATE/ZIP

Although you are not required to provide any personal information, you should provide enough information to allow the agency to contact you about this request. The processing of this request may be stopped if the agency is unable to contact you. Therefore, please provide any information that will allow the agency to contact you (name or alias, telephone or fax number, mailing address, e-mail address, etc.).

I WOULD LIKE THE FOLLOWING GOVERNMENT RECORD:

Describe the government record as specifically as possible so that it can be located. Try to provide a record name, subject matter, date, location, purpose, or names of persons to whom the record refers, or other information that could help the agency identify the record. A complete and accurate description of the government record you request will prevent delays in locating the record. Attach a second page if needed.

I WOULD LIKE: (Please check one or more of the options below)

To inspect the government record.

A copy of the government record. (Please check one of the options below.) See the back of this page for information about fees that you may be required to pay for agency services to process your record request. Note: Copying and transmission charges may also apply to certain options.

Pick up at agency (date and time): _____

Mail _____

Fax (toll free and only if available) _____

Other, if available (please specify): _____

If the agency maintains the records in a form other than paper, please advise in which format you would prefer to have the record.

Electronic Audio Other (please specify): _____

Check this box if you are attaching a request for waiver of fees in the public interest (see waiver information on back).

SEE BACK FOR IMPORTANT INFORMATION

NOTICE TO REQUESTER

DATE: _____

TO: _____

FROM: _____
Department Name, Name & Telephone Number of Contact Person at Agency

ACCESS TO THE GOVERNMENT RECORD YOU REQUESTED (copy of request attached or brief description below)

will be granted in its entirety.

cannot be granted because:

agency does not maintain the requested record.

agency needs a further description or clarification of the requested record. Please contact the agency within _____ days or your request will be considered abandoned.

The request would require the agency to create a summary or compilation from records that are not readily retrievable.

is denied in its entirety or will be granted only to certain part(s) of this government record. Denial of access to this or portions of this government record is based upon the following subsections of section 92F-13, Hawaii Revised Statutes, or other laws as cited below. The portions of the record that the agency will not disclose are described in general terms:

STATUTE _____ RECORD OR SERVICES WITHHOLD _____

METHOD AND DATE OF DISCLOSURE:

Inspection at the following location: _____ On (date/time): _____

Copy provided to you:

available for pick-up at the agency on (date/time) _____

to be mailed _____

transmitted by other means as requested _____

Incremental Disclosure: The record will be disclosed in increments. (The agency must attach a description of extenuating circumstances that support its intention to disclose incrementally. See 52-71-15 H.A.R.) The first increment will be available on _____.

See Back for Information on Fees

Should you have questions about the agency's response, you may contact the person named above. If you are not satisfied with the agency's response, you may call the Office of Information Practices at 888-386-5888.

OIP 2 (rev. 1/2000)



Each year, the OIP makes presentations and provides training in information practices and the Sunshine Law. The OIP conducts this outreach effort as part of its mission to inform the public of its rights and assist government agencies in complying with the law.

Following the substantial budget cutback and staff reduction at the beginning of FY 1999, the OIP reduced its formal educational program and refocused much of its educational and training efforts on the OIP web site. For more information about this resource, please see the section beginning on page 48.

In spite of the reduced budget, the OIP continues to train agencies and the public each year.

This past fiscal year, the OIP gave its annual presentation on information practices and the Sunshine Law to new members of the *State's Boards and Commissions*. It is critical to train newly appointed members in the laws that most directly affect the operations of a board or commission.

The OIP also provided training sessions on the UIPA and the Sunshine Law to the *Department of Commerce and Consumer Affairs*, as well as the *Department of Land and Natural Resources*.

In addition, at the invitation of *Hawaii County*, the OIP traveled to Hilo to conduct comprehensive training in the State's public records law for Hawaii County employees. Also in Hilo, the OIP trained board and commission members, and their staffs, in the Sunshine Law.

The OIP completed its training in Hilo with two sessions for members of the public, providing an overview of the UIPA and the Sunshine Law and moderating a panel discussion on open government.

The OIP staff attorneys have found that these training sessions offer participants the ability to discuss the policy concerns they have, and to ask questions and get answers right away. These sessions are a critically important way of keeping our government open.

The Director also made a number of speaking appearances during the year, including the following:

- *Conference on Government Watchdogs in Hawaii: Making Government Accountable*, at the University of Hawaii, Hilo, participating with Hawaii County Mayor Harry Kim and representatives from the Campaign Spending Commission, State Ethics Commission, Ombudsman, Office of Elections, the Legislative Auditor, Hawaii County Board of Ethics, and Hawaii County Clerk.
- *Administrative Law class at the University of Hawaii, Manoa*, speaking on the UIPA.
- *Hawaii Department of Human Services*, speaking on privacy in Hawaii.
- *Association of Records Managers and Administrators, Hawaii Chapter*, participating on a panel on “Privacy and Access to Customer and Public Information”
- *Personal Privacy in the Digital Age Conference*, in Arlington, Virginia, chairing two panels and helping organize the conference
- *Third National HIPAA Summit*, in Washington D.C., participating in a panel on “State Laws Regulating Healthcare Privacy and Data Security.”



